

Nirankar Prasad Vs. Director of Industries and ors.

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Court : Allahabad

Decided On : Jan-23-1959

Reported in : AIR1959All681

Judge : S.S. Dhavan, J.

Acts : Uttar Pradesh Government Industries Manual, 1950; Government Technical Institutions Examination Rules - Rules 4, 6 and 16; [Constitution of India](#) - Articles 154 and 226

Appeal No. : Civil Misc. Writ No. 3285 of 1958

Appellant : Nirankar Prasad

Respondent : Director of Industries and ors.

Advocate for Def. : Lakshmi Saran, Addl. Junior Standing Counsel

Advocate for Pet/Ap. : Shambhu Pd., Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S.S. Dhavan, J.

1. This is a petition under Article 226 of the Constitution filed by a student of the Government Technical Institute, Lucknow, praying for the quashing of certain letters written by the Joint Director of Industries, U. P. Kanpur in which that Officer refused his request for being declared successful in the examination for the diploma in the Mechanical and Engineering Course. The petitioner also prays for a direction in the nature of mandamus commanding the Director of Industries and the other respondents to declare him successful in the aforesaid examination. The petition is supported by an affidavit sworn by the petitioner himself. He makes the following allegations.

After having passed the High School Examination in 1951, he joined Mechanical Engineering Training class in the Government Technical Institute, Lucknow in 1954. There is a three years course of study for this diploma which is awarded after the student is successful in the final examination. The petitioner passed the examination at the end of the first year in 1955 and the second year in 1956. He appeared in the final examination in 1957 and claims that, according to the rules framed by the Government, he obtained the minimum marks required for being placed among the successful candidates in the Third Division.

A table of his marks is attached to the petitioner's affidavit as Annexure 'A.' I shall examine the mark sheet in some detail hereafter, but it will be sufficient at this stage to note that he claims to have obtained 55 per cent marks in the aggregate, and more than 33 per cent in individual subjects except two in which he secured more than 25 per cent. Thus, according to him, he secured a Second Division standard in the aggregate but less than 33 though more than 25 per cent in two subjects. He contends that under Rule 16 of the Examination Rules framed by the Government for the regulation of the examination of Government Technical and Industrial Institutions and Government aided Institutions in Uttar Pradesh, he was entitled to be declared successful in the Third Division. The result of the final examination was published in June, 1957, and the petitioner's name was not included in the list of successful candidates. In July he applied for a scrutiny of his marks, which was refused. He made a representation to the Minister of Industries on 8-10-1957, and received a letter from the Joint Director of Industries dated 18th November in which he was informed that he had unmistakably failed and that

nothing could be done in his case. On 8-8-1958, he was informed that his representation to the Government had been rejected and he could not be declared successful. Aggrieved by the decision of the authorities concerned, he has come to this court for relief.

2. The petition is opposed by the respondents and a counter affidavit has been filed which is sworn by Om Prakash Bajaj described as an examination Assistant in the Directorate of Industries (Technical Education Section), Kanpur. It is admitted that the petitioner was placed in the list of candidates who had failed in the Annual Examination, but this decision is justified on the following grounds. It is conceded by the State that rules have been framed for the purpose of conducting the examination. The existence of Rules 6 and 16 which are relied upon by the petitioner is also admitted in paragraph 10 of the counter affidavit. But it is contended that Rule No. 6 of the Examination Rules is not applicable to the petitioner's case,

'because according to the rules 'course-marks are taken into account only for the purpose of determining of Division and not for the purpose of passing.'

It is further pointed out that the petitioner himself knew that course-marks obtained by a candidate were added to his total marks only for determining his Division and not to enable him to pass the examination. Reliance is placed by the respondents on two letters written by him to the Joint Director of Industries which have been attached to the counter affidavit as Annexures 'B' and 'C' respectively. In the first letter the petitioner wrote,

'I know that course-marks are not counted for passing but are counted only for Division.' I shall refer to these letters hereafter. At this stage it is sufficient to note that respondents relied on these letters to prove that the petitioner has no real grievance on the score that he has been declared unsuccessful under rules, of which he was fully aware.

3. The entire controversy centres round the question whether the petitioner is entitled to add course-marks to his aggregate of marks in the annual examination. The phrase 'course marks' requires elucidation. It appears that a record of

practical and theoretical work done by a student in each year is maintained by the Head of the institution, He is regularly marked by the teachers concerned according to the quality of his work in class. At the close of the year all the marks obtained by the student are counted. All this happens before the annual examination takes place. The marks for practical and theoretical work in class are called 'course-marks.'" These are taken into account for declaring the results of that year, in accordance with Rule 4 of the Examination Rules.

4. The same rule also provides that the marks obtained by a student at the terminal examination shall be taken into consideration in declaring the results of the annual examination. Rule 4 contains a table in accordance with which marks have been allotted one column, and terminal and annual examination marks, another.

5. The rule also provides that in the second and subsequent years one more column shall be added to this table, which shall contain 15 per cent of the marks obtained in the annual examination of the previous year. Thus it is clear from Rule 4 that course marks -- that is, the marks obtained by the candidate for practical and theoretical work throughout the year -- are to be added to the marks obtained by him in the annual examination and 'taken into account for declaring the results of that year.' There is nothing in this rule to suggest that the course marks are taken into account only for the purpose of determining the division of the candidates and not for the purpose of passing. The exact relevant words in Rule 4 are 'At the close of the year all the marks obtained by the student should be counted and taken into account for declaring the results of that year. Similar marks of the terminal examination shall also be taken into consideration in declaring the annual examination results. Thus, course marks have to be taken into account in declaring a candidate's result,

The word 'result' is not confined to the result of those who pass in the first or the second division but includes every candidate who has appeared in the examination. I therefore hold that the contention of the respondents that course marks are taken into account only for the purpose of determining of the division and not for the purpose of passing is not borne out by the rules. Learned Junior

Standing Counsel for the State was not able to point out a single rule in the Examination Rules which supports this contention which is contrary to common sense. The interpretation of the State that the rules are meant to enable a candidate to lift himself from the lowest to the highest division, but not to cross the border between 'just failed' and 'just passed' is not based on any rational principle.

6. Rule 6 is even more explicit. It is as follows:-'Record of practical and theoretical work for the full course of training will be maintained and regularly marked by the teachers concerned, and countersigned from time to time by the head of the institution. The head of the institution will supply to the Deputy Director of Industries (Education) with form A (b) a statement called 'Statement of course marks,' in the form prescribed in paragraph (a) (4) above giving the result of the year previous to the final year along with a statement in the following form. This percentage of course marks will be taken into account for declaring the results of the final examinations.'

Thus this rule contains an unambiguous direction that the percentage of course marks will be taken into account for declaring the results of the final examination.

7. Rule 16 deals with divisions or classes to be awarded on the basis of the examination rules. There are two classes of institutions. (1) Harcourt Butler Technological Institute and (2) Other institutions. The first appears to be in a class by itself. The petitioner's institution is in the second category. This rule states that, in the examinations of institutions in the second class, 66 per cent of the maximum marks will entitle a candidate to be placed in the first division, 50 per cent in the second, and 33 per cent in the third.

There is not a word to the effect that course marks shall be considered for the purpose of determining the division of a candidate. Therefore, it is obvious that the practice of adding course marks has no relevance whatsoever to the ascertainment of divisions or classes. They are added for the purpose of declaring the result of the candidate and, for precisely this reason, course marks are mentioned in rules 4 and 6 which deals with examination results and not with divisions or classes.

8. I shall now consider the contention of the petitioner that, according to rules 4, 6 and 16, he is entitled to be declared successful in the third division. aS stated above under rules 4 and 6, his course marks must be added to the aggregate marks obtained by him at the annual examination. Rule 16 provides that a candidate who secures 40 per cent of the maximum marks in the aggregate ut fails in not more than two individual subjects, shall be declared as having passed in the third division, provided his marks in the subjects in which he fails are more than 25 per cent.

The petitioner claims to have obtained 45 per cent of the marks in the aggregate under any interpretation of the rules. This is common ground between the parties. The petitioner has also passed in subject No. 1 for the purposes of a third division under any interpretation of the rules. He has also passed in subject No. 4 irrespective of any course marks. In fact in Workshop practical he obtained 423 marks out of a maximum of 500, which makes 84.5 per cent.

In Workshop Technology and management he obtained 40 per cent marks irrespective of any course marks. But in subjects 2 and 3, he failed this is common ground). However, even in these subjects if course marks are added to the examination marks, he obtains a total of more than 25 per cent in each. Thus, he' would qualify for being declared successful in the third division under Rule 16, provided he is given the credit of course marks in subjects 2 and 3. If he is not, his marks in these two subjects fall below 25 per cent and he cannot claim the benefit of Rule 16.

9. According to the respondents, the petitioner is not entitled to add the course marks to his examination marks. I have already held that the rules clearly provide that course marks shall be added for the purpose of declaring a candidate's result and not merely for the purpose of determining his division. I, therefore, hold that, if the rules were correctly applied, the petitioner should have been declared successful.

10. The petitioner asks for a writ of mandamus directing the respondents to declare him successful in the third division in accordance with Rule 16 read with rules 6 and 4. There is no doubt in my mind that the petitioner has suffered a great

hardship as a result of a wrong interpretation of the rules framed by Government. The question, however, before me is whether this court can give him any relief under Article 226 of the Constitution. He has asked for a writ of mandamus.

The purpose of this writ is to enforce a specific legal right in cases where no specific legal re-medy is provided for enforcing that right. It is issued to public officials and public bodies to carry out their legal duties. An order of mandamus will be granted ordering that to be done which a statute requires to be done. But in order that a mandamus may issue to compel some thing to be done, it must be shown that the law imposes a legal duty, for it is only in respect of a legal right that mandamus will lie. Furthermore, mandamus is only granted to compel performance of duties of a public nature It will not issue for a private purpose that is to say for the enforcement of a merely private right. In the present case there is no statutory right or duty to enforce.

11. Furthermore, mandamus will not issue for the enforcement of a purely contractual right, unless the right is based also on a statute or some other provision having the force of law. The question, in the present case, is: has the petitioner established that the respondents have failed to perform any duty imposed upon them by statute, or deprived him of any right which vests in him under that statute, irrespective of any contractual relations between him and the respondents? Learned counsel relied on the rules framed by Government for the conduct of the examinations by technical institutions run by Government. These rules are a part of the Industries Manual, which was issued by the Government of Uttar Pradesh, Department of Industries and Commerce, in 1950. The preface to this Manual is signed by Mr. L. C. Jain, I.C.S. Director of Industries, U. P. It is as follows :--

'The Industries Department was greatly expanded during the war, mainly due to war production activities. This along with the necessity to lend officers and staff to Government of India and other departments of the Provincial Government, resulted in the employment of a large number of temporary new men in all capacities. It was repeatedly felt that previous Government orders and standing orders of my predecessors were ignored by the new staff out of ignorance of these

orders and rules.

It was accordingly decided to issue this Manual, which is rough and ready collection of standing orders of the department. Certain important Government orders, which are constantly needed in the day to day working of the department have also been embodied in this Manual.

The Manual has been prepared hurriedly without any special staff and at a period when all officers were busy with important regular duties. I do not expect that this first edition (sic) will be either complete or free from faults. Whatever the contents of this manual are in conflict with any standing Government Order, the orders in the Government Order will prevail and the manual may be ignored.

It will, however, be greatly appreciated if faults that come to notice and any suggestions for the improvement of the manual are sent to the head office as they come to notice by gazetted officers of the department.

I especially appreciate the hard work done by Mr. S. S. Nigam Divl. Supdt. of Industries in the compilation of this Manual.'

A perusal of this preface shows that the Manual is 'a rough and ready collection of standing orders of' the department of Industries and Commerce. It says 'certain important Government orders which are constantly needed in the day to day working of the department have also been embodied in this Manual.' Thus the Manual appears to be nothing more than a compilation of various Government orders issued by the U. P. Government from time to time. It is not proved that these orders were issued under any statutory authority.

Learned Junior Standing counsel for the State contended that they were merely executive orders, which have no statutory force and impose no statutory duty on any one. Learned counsel for the petitioner was not able to show that these rules were issued under any rule-making power under any statute. He, however, contended that they were issued by the Governor as the head of the executive and therefore must be deemed to have been issued under Article 154 of the Constitution. This argument is ingenious, but I am unable to accept it.

That Article merely specifies the authority which is invested with the executive power of the State, and authorises him to exercise it either himself or through officers subordinate to him. It does not define executive authority which may be of various kinds. It may include powers conferred by statute but is not confined to them.

There are certain powers inherent in the executive branch of the Government. Therefore Article 154 is not of itself sufficient to clothe a Government order with the attributes of a statutory notification so as to bring it within the rules relating to the issue of a writ of mandamus.'

12. The petitioner's case appears to be somewhat similar to that of R. Venkata Rao, which was decided by the Privy Council by their judgment reported in R. Venkata Rao v. Secretary of State, AIR 1937 P.C. 31. In that case the petitioner had been removed from the service of Government and in violation of the rules governing his conditions of service. The rules were made under Section 96-B of the Government of India Act, 1919, which contained the provision that every person in the civil service of the Crown in India held office during His Majesty's pleasure.

After examining the case on merits their Lordships held that there had been a serious and complete failure to adhere to important and indeed fundamental rules and that 'mistakes of a serious kind' had been made and 'wrongs had been done which call for redress.' They deplored the action of the Government in no uncertain language but came to the conclusion that no redress could be obtained by the petitioner from the courts by action.

13. In the present case too I feel that the petitioner has suffered a grave wrong. He entered the institution in the faith that the rules governing the conduct of examinations would be followed. These rules contain an implied assurance that they would be applied to all cases and would not be subject to alteration at the whim of any official. All rules whether justiciable or not, have this fundamental purpose in common that they enable the citizen to ascertain his rights in a given situation. The sanctity of rules which do not confer justiciable rights is not diminished merely because the sanction behind them is self-imposed. As was

observed by the Privy Council in AIR 1937 PC 31 at p. 34 'it is obvious that supreme care should be taken', that solemn assurances of this sort 'should be carried out in the letter and in the spirit, and the very fact that Government in the end is the supreme determining body makes it the more important thatthe rules should be strictly adhered to.' In the present case, due to a wrong interpretation of the rule by some official, injustice has been done to the petitioner. But I have reluctantly come to the conclusion that this is not a case in which the court would be entitled to interfere under Article 226 of the Constitution. The proper remedy is to approach the authorities once again.

14. Learned counsel for the petitioner contended that the petitioner's relation with the respondents was based on contract. [express 110 opinion on this point. If there was a contract, express or implied, between the petitioner and the respondents, he will not be without remedy in the courts of law. But this court cannot issue a writ of mandamus for the enforcement of a private right based purely On contract.

15. Before deciding this petition, I am compelled to make a few observations on one matter which was in issue between the parties. As stated above, the petitioner has alleged that he is entitled under the rules to be declared successful and made representations to Government to that effect. The respondents have denied that the petitioner is so entitled. They further allege that the petitioner himself confessed before the authorities at one stage that he realised that course marks were not counted for passing but only for ascertaining the division of candidates. They filed a copy of a letter alleged to have been written by the petitioner to the Joint Director (Education) Industries, U.P., Kanpur. In his rejoinder the petitioner explained the circumstances under which he was compelled to write this letter. He states that the letter was written in the presence of the Joint Director. During the hearing, learned counsel for the petitioner even stated that the letter was dictated by the Joint Director and a copy of the original rough draft was produced before me. It is not necessary for the purpose of deciding this case to ascertain how this letter came to be written. But the language of the letter clearly shows that it was not written voluntarily. The respondents have filed another letter written by the petitioner to Government, which is annexure *C' of the affidavit. A comparison of

the styles of the two letters shows that the first was obviously dictated by some one with an effective command of English. The petitioner, whose educational qualifications are limited to the High School Examination, could not possibly have the command of the language which the letter Annexure 'B' exhibits. I am, therefore, not prepared to believe that the petitioner at any stage voluntarily conceded that he Was not entitled to be placed in the list of successful candidates.

16. In the circumstances of this case, I am reluctantly compelled to dismiss this petition. The petition is rejected but as the petitioner has fully established the correctness of his interpretation of the rules, there will be no order as to costs.

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